

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RENATO R. DUGENA AND	:	SMALL CLAIMS
JULIET D. DUGENA	:	DETERMINATION
	:	DTA NO. 819967
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax	:	
Law and the New York City Administrative	:	
Code for the Year 2000.	:	

Petitioners, Renato R. Dugena and Juliet D. Dugena, 85-18 126th Street, Kew Gardens, New York 11415, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2000.

A small claims hearing was held before Gary R. Palmer, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on February 17, 2005 at 1:45 P.M., with all briefs to be submitted by May 2, 2005, which date began the three-month period for the issuance of this determination. Petitioner Renato R. Dugena appeared *pro se* and on behalf of petitioner Juliet D. Dugena. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Jacob Tiwary).

ISSUE

Whether the Division of Taxation properly treated the New York income reported on petitioners' 2000 New York State and City of New York resident income tax return as a basis for computing petitioners' self-assessed personal income tax liability for the tax year at issue.

FINDINGS OF FACT

1. Petitioners timely filed their 2000 New York State and City of New York resident income tax return on which they reported total income tax due in the sum of \$1,158.00, total New York State and City of New York income tax withheld of \$1,611.99, and a claim for the refund of taxes overpaid in the sum of \$749.76.

2. On July 2, 2001, the Division of Taxation ("Division") issued to petitioners a notice and demand for payment of tax due in the sum of \$181.01 plus interest. In the computation section of the notice, the Division accepted petitioners' computation of New York State taxable income as reported, and then recomputed petitioners' New York State income tax to be \$1,087.00 plus City of New York resident income tax to be \$791.00, less tax reported withheld by petitioners in the sum of \$1,611.99 and a City of New York STAR credit of \$85.00, leaving tax due in the sum of \$181.01 plus interest. This notice and demand bore L019730331 as its assessment ID number.

3. At a point in time not reflected in the record the Division received an amended resident income tax return, Form IT-201-X, for the year 2000, and a resident income tax return, Form IT-201, printed with the year 2000, but with the fiscal year ending December 31, 2002 handwritten in the appropriate boxes. Both of these returns bore the handwritten date January 5, 2003, and had attached a 2000 wage and tax statement, Form W-2, reporting \$3,600.00 in wages for that year. The amended income tax return identified Tanveer Chaudry as the preparer, and reflected a reduction of Federal adjusted gross income from \$28,366.00 to \$3,600.00. The amount of the overpayment to be refunded was \$258.00. The amended return included no explanation for any of the changes it reported. The Form IT-201 for 2002 also named Tanveer Chaudry as the

preparer, and reported wage income of \$3,600.00 and a refund due of \$258.00. Both of these returns bear signatures in the “your signature” and “spouses signature” boxes that are visually similar to petitioners’ signatures on their timely filed 2000 resident income tax return.

4. In March of 2003, petitioners filed a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (“BCMS”), which request referenced L-019730331-6 as the assessment ID number, and informed BCMS that petitioners were represented by Chaudry Accounting Services, and that “Assessment ID 019730331-6 was being amended”

5. On November 14, 2003 BCMS issued a conciliation default order referencing notice number L019730331 for the year 2000. By this order BCMS sustained the notice and dismissed the request.

6. By letter dated January 30, 2004 the Division referenced the 2000 amended income tax return and requested a written explanation for the reduction in income reflected in the return.

7. By conciliation order dated April 16, 2004 and referencing notice number L019730331, BCMS sustained the notice and denied the request.

8. On May 14, 2004 petitioners filed a petition for a small claims hearing with the Division of Tax Appeals for tax year 2000. The assessment ID number set forth on this petition is L023565059. Attached to the petition is a copy of the conciliation order dated April 16, 2004 which references notice number L019730331.

9. The records of the Division of Tax Appeals reveal that petitioners, on February 25, 2005, filed a separate petition for a small claims hearing with the Division of Tax Appeals for tax year 2000. The assessment ID number on this petition is L023565059. This matter is

currently awaiting a hearing before the Division of Tax Appeals and has been assigned DTA number 820381.

10. During the hearing on the instant matter the Division's representative moved to amend the answer to include the consideration of the foregoing notice and demand number L023565059, which notice imposes tax in the sum of \$1,139.00 plus penalty and interest for tax year 2000.

11. Included in the record of the instant proceeding is a copy of a notice of judgement issued by the Civil Court of the City of New York, County of Queens, in the matter of Renato R. Dugena, claimant, against Tanveer Chaudry, defendant. This document reveals that on August 12, 2004 the claimant was awarded a money judgement in the sum of \$3,000.00 plus interest and disbursements rendered after an inquest.

SUMMARY OF THE PARTIES' POSITIONS

12. Petitioners do not dispute the assessment of the \$181.01 tax item claimed to be due by the Division, but do assert that their signatures on the amended income tax return and the resident income tax return filed in January of 2003 are forgeries, and that any additional tax claimed to be due over and above the amount at issue herein is the fault of petitioners' tax preparer, Mr. Chaudry, as established by the Civil Court judgement in evidence.

13. The Division asserts that the amount of tax stated as due on its notice and demand was self-assessed by petitioners in their timely filed resident income tax return, and that the amount demanded in its notice and demand issued on March 1, 2004 under assessment ID number L023565059 is also due and owing. The Division asks that its motion to amend the answer to include this separate claim for tax year 2000 be granted.

CONCLUSIONS OF LAW

A. A determination of tax must have a rational basis in order to be sustained upon review (*Matter of Grecian Square, Inc. v. State Tax Commission*, 119 AD2d 948, 501 NYS2d 219).

The source of the rational basis is the presumption of correctness of the assessment that arises when no evidence is presented challenging the assessment (*Matter of Atlantic & Hudson Limited Partnership*, Tax Appeals Tribunal, January 30, 1992). The presumption of correctness attaches to a notice and demand properly issued by the Division, and the taxpayer has the burden of demonstrating that such notice is incorrect (*Matter of McKee*, Tax Appeals Tribunal, June 27, 2002). In the matter here under review the rational basis for the Division's determination that petitioners owe \$181.01 in tax is the self assessed liability reflected in their timely filed 2000 resident income tax return (*Matter of Vallone*, Tax Appeals Tribunal, August 21, 2003).

B. Not only have petitioners not disputed the tax liability reflected in the Division's July 2, 2001 notice and demand, but they have disaffirmed as forgeries the later filed resident income tax returns, including the 2000 amended resident income tax return. It follows that the Division's notice and demand is presumed to be correct and the absence of any evidence presented by petitioners that calls into question the accuracy of the notice and demand serves to leave intact the presumption of correctness of the notice.

C. The Division's motion to amend the answer to add a reference to the later filed notice and demand is denied. While sections 3000.13(b)(3) and 3000.4(d)(2) of the Rules of Practice and Procedure of the Tax Appeals Tribunal do permit the amendment of a pleading to conform to the proof at a small claims hearing, because the record does not include a copy of the March 1, 2004 notice and demand, there is no proof in the record to conform an amended pleading to. The

Division of Tax Appeals has accepted the filing of a petition by petitioners in protest of the March 1, 2004 notice and demand, and issue has been joined. Each party is to have the opportunity, in due course, to present its proof in support of or in opposition to the notice.

D. Petitioners, in their instant petition, have referred to refunds being due them for tax years 2001 and 2002. Tax Law § 687(a) permits a claim for a credit or refund of an overpayment of income tax where such claim is filed by the taxpayer within three years from the time the return was filed or within two years from the time the tax was paid, whichever period expires later. Because the record in this matter does not include copies of petitioners' income tax returns for 2001 or 2002, or proof of the overpayment of income tax or proof of a claim for credit or refund directed to the Division for each said year, the Division of Tax Appeals lacks jurisdiction to consider petitioners' refund claims for those years.

E. Petitioners assert that their tax preparer is to blame for some part of their 2000 income tax liability, and support that claim with the copy of the New York City Civil Court notice of judgement granting to them a money judgement, apparently by default, against Mr. Chaudry. The Civil Court judgement is irrelevant to the outcome of the instant income tax proceeding, not only because there is no showing by petitioners that Mr. Chaudry was in any way involved in the preparation of petitioners' timely filed 2000 resident income tax return, but also, because the Division was not a party to the New York City Civil Court proceeding between Mr. Dugena and Mr. Chaudry, the Division cannot be bound by the outcome thereof.

F. The petition of Renato R. Dugena and Juliet D. Dugena is denied and the notice and demand for payment of tax, dated July 2, 2001, is sustained.

DATED: Troy, New York
June 9, 2005

/s/ Gary R. Palmer
PRESIDING OFFICER